

ESTTA Tracking number: **ESTTA577612**Filing date: **12/19/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Spartan Brands, Inc.		
Entity	Corporation	Citizenship	New York
Address	451 Park Avenue South, Fifth Floor New York, NY 10016 UNITED STATES		

Attorney information	Mark J. Rosenberg Tarter Krinsky & Drogin 1350 Broadway New York, NY 10018 UNITED STATES mrosenberg@tarterkrinsky.com Phone:2122161127
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Registration Subject to Cancellation

Registration No	4403243	Registration date	09/17/2013
Registrant	Appell, Randy 11 Colgate Lane Woodbury, NY 11797 USX		

Goods/Services Subject to Cancellation

Class 032. First Use: 2013/02/08 First Use In Commerce: 2013/02/08
All goods and services in the class are cancelled, namely: Concentrates, syrups or powders used in the preparation of soft drinks

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
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Attachments	ICEDC Petition.pdf(336634 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Mark J Rosenberg/
Name	Mark J. Rosenberg
Date	12/19/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SPARTAN BRANDS, INC.)	
)	
Petitioner,)	Cancellation No. _____
)	
v.)	Registration No. 4,403,243
)	
RANDY APPELL,)	Mark: ICEDC
)	
Respondent.)	Registration Date: September 17, 2013
)	

PETITION FOR CANCELTION

1. Petitioner, Spartan Brands, Inc. (“Petitioner”) is a corporation organized under the laws of the State of New York, with a place of business at 451 Park Avenue South, Fifth Floor, New York, New York.

2. According to U.S. Trademark Registration No. 4,403,243 for the trademark ICEDC for concentrates, syrups or powders used in the preparation of soft drinks (the “Registration”), registrant, Randy Appell (“Registrant”), is an individual residing at 11 Colgate Lane, Woodbury, New York 11797. A true and correct copy of a printout of the Registration from the USPTO’s Internet database is attached hereto as Exhibit A.

3. Petitioner owns U.S. Trademark Application Serial No. 86/143030 for the trademark ICEDC for vitamins and nutritional supplements and dietary and nutritional supplemental drinks in the nature of vitamin and mineral beverages filed on December 13, 2013 (“Petitioner’s Application”). A true and correct copy of a printout of Petitioner’s Application from the USPTO’s Internet database is attached hereto as Exhibit B.

4. Upon information and belief, the Registration will be cited by the Examining Attorney as a bar to Petitioner's registration of ICEDC as set forth in Petitioner's Application, thereby causing damage to Petitioner. Petitioner thus has standing to bring this proceeding.

5. Upon information and belief, Registrant has never used the ICEDC mark in commerce (as that term is defined by 15 U.S.C. § 1127) in connection with concentrates, syrups or powders used in the preparation of soft drinks ("Registrant's Goods").

6. Upon information and belief, Registrant, when he submitted his application to register his ICEDC mark, Application Serial No. 85/845612 ("Registrant's Application"), falsely claimed that "the [ICEDC] mark was first used by the applicant or the applicant's related company or licensee predecessor in interest at least as early as 02/08/2013, and first used in commerce at least as early as 02/08/2013, and is now in use in such commerce." Upon information and belief, Registrant made this statement intentionally and with knowledge of its falsity.

7. Upon information and belief, at all relevant times, Registrant knew that neither he, a related company, licensee or a predecessor-in-interest had ever used the ICEDC mark in commerce on any of Registrant's Goods.

8. Upon information and belief, at all relevant times, Registrant knew that his claim of use made in Registrant's Application was false.

9. Registrant's statement regarding the use of the ICEDC mark was a misrepresentation of a material fact as the USPTO would not have allowed the Registration to issue had it known that Registrant's ICEDC mark had never been used on any or some of the Registrant's Goods.

10. Upon information and belief, Registrant made the false statement regarding the use of Registrant's Goods with the intent to deceive the USPTO into granting the Registration.

11. Upon information and belief, Registrant obtained the Registration through a fraud on the Trademark Office.

12. Therefore, Petitioner will be prejudiced by the continued registration of Registrant's U.S. Registration No. 4,403,243 for ICEDC and hereby petitions to cancel the Registration.

13. The Registration has been acquired by fraud and should be canceled under Section 14(3) of the Lanham Act.

WHEREFORE, Petitioner prays that the Registration be canceled and that this Petition be sustained in favor of Petitioner.

Dated: December 19, 2013

Tarter Krinsky & Drogin LLP

By: /s/ Mark J. Rosenberg
Mark J. Rosenberg

1350 Broadway
New York, New York 10018
(212) 216-1127

Attorneys for Petitioner

EXHIBIT A



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ICEDC

Word Mark	ICEDC
Goods and Services	IC 032. US 045 046 048. G & S: Concentrates, syrups or powders used in the preparation of soft drinks. FIRST USE: 20130208. FIRST USE IN COMMERCE: 20130208
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85845612
Filing Date	February 10, 2013
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	July 2, 2013
Registration Number	4403243
Registration Date	September 17, 2013
Owner	(REGISTRANT) Appell, Randy INDIVIDUAL UNITED STATES 11 Colgate Lane Woodbury NEW YORK 11797
Type of Mark	TRADEMARK

Register

Live/Dead Indicator

PRINCIPAL

LIVE

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EXHIBIT B

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ICEDC

Word Mark	ICEDC
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: VITAMINS AND NUTRITIONAL SUPPLEMENTS AND DIETARY AND NUTRITIONAL SUPPLEMENTAL DRINKS IN THE NATURE OF VITAMIN AND MINERAL BEVERAGES
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	86143030
Filing Date	December 13, 2013
Current Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) SPARTAN BRANDS, INC. CORPORATION NEW YORK 451 Park Avenue South New York NEW YORK 10016
Attorney of Record	Philip Y. Braginsky
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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